REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested.

As agreed during the interview conducted on December 18, 2008, clams 5 and 6 have been cancelled so as to avoid any possible lack of clarity that the claimed "first part" is data representing an audio signal, as recited in claim 1. Indeed, in response to the rejection of claim 6 under 35 U.S.C. §112, second paragraph, claim 1 has been even further amended above so as to clarify and make certain that applicants' claimed invention sends a first audio-only part (i.e., from which no image could be displayed, low quality or otherwise) – followed by transmission of one of the alternative video-containing second parts after receiving data indicative of the available transmission capacity (which transmission capacity data is used to choose among the alternative video-containing second parts).

Accordingly, all outstanding formal issues are now believed to have been resolved in the applicants' favor.

The rejection of claims 1-3 and 5 under 35 U.S.C. §102 as allegedly anticipated by Deshpande '858 is respectfully traversed.

Neither Deshpande (nor Iwamura) teaches sending audio data (only) before video data. The Examiner alleges that a base layer video described in Deshpande includes audio data, although there seems to be no basis for this allegation. Deshpande is not concerned with determining the bandwidth of a network, prior to transmission of video data, but describes a media file which may contain both video and audio streams.

The Examiner should note that claim 1 now even more clearly defines the first part to be transmitted to be audio only (i.e., to contain no video data).

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The Examiner alleges that Deshpande teaches sending a multi-part signal in which the first part is a video signal that contains audio. However, throughout Deshpande, references are made only to immediate sending of a video-containing layer. Contrary to the Examiner's allegation, the skilled person would understand from Deshpande that the first part (described at paragraph [0024]) contains video data. This is a teaching directly contrary to the claimed invention.

This teaching is supported at other sections of Deshpande, quoted below with emphasis added. At paragraph [0032], the skilled person would learn that the data transmission system of Deshpande is arranged with:

> "...a data input stream at an input 32. The data input stream could be video, audio, or other data..."

Deshpande's digital transmission system is described further at paragraph [0049] with respect to a slide show, the data for which is encoded into a base encoded layer 40 and two enhancement layers 42 and 44. It is clear from paragraph [0049] that Deshpande's data transmission system is based on splitting a video signal for the slide show into a plurality of layers, each layer containing video information.

From paragraph [0051] of Deshpande, the skilled reader would learn how to deal with insufficient network bandwidth. According to Deshpande, if the network has very little bandwidth available for the transmission, then the scheduler will only be able to send the base layer 40. However, as this base layer is a video layer, an image will still be recreated on the target display 370, although this mage may be of marginal quality.

This is clearly distinct from the data transmission of the present invention, according to which the first layer sent is audio data which may be buffered at the

recipient, but where <u>no image can be displayed</u> until at least one further layer containing video is supplied. The present invention as described (see, for example, page 3, lines 12-19, and page 4, lines 32-34) and as presently claimed in claim 1 is limited to transmission of a data part representing an audio signal and of separate, alternative data parts representing video, i.e., where audio and video data are carried separately. As set out at page 5, lines 23-25 of the instant specification, video can be held (buffered) at the server during the initial period of <u>audio-only</u> transmission.

If, as alleged by the Examiner, the video data and audio data of Deshpande were contained in a single part, then this would distance the teaching of Deshpande still further from the data transmission of the present invention, according to which audio and video data are carried <u>separately</u> – and the first part to be transmitted is the audio data.

Deshpande does not provide the advantages of the present invention which are derived, in part, from sending no video data over the network until the transmission capacity of the network is established.

As can be seen even from the abstract of Deshpande, Deshpande <u>immediately</u>, without any delay, sends lower level <u>video</u> layer data to "form a basic image." Data in higher layers enhancing that basic image is subsequently sent as a function of available bandwidth determined by a "scheduler." According to paragraph [0025] of Deshpande, the scheduler apparently operates in accordance with conventional techniques to determine the maximum available transmission bandwidth.

Given such fundamental deficiencies of Deshpande with respect to the above-discussed features of claim 1, it is not necessary at this time to discuss additional deficiencies of Deshpande with respect to other features of the rejected claims. Suffice it

to note that, as a matter of law, it is impossible for a reference to anticipate a claim unless it teaches each and every feature of that claim.

The rejection of claim 6 under 35 U.S.C. §103 as allegedly being made "obvious" based on Deshpande in further view of Iwamura '463 is also respectfully traversed – albeit now mooted by the above cancellation of claim 6.

Iwamura, unlike the present invention, is not concerned with determining the bandwidth of a network prior to transmission of video data, but does describe an MPEG-4 signal that may contain multiplexed audio and video data. Iwamura teaches away from the invention of claim 1 in which audio and video data are transmitted separately, with the audio data sent initially, i.e., with no video content, in order to allow the available bandwidth of the network to be determined before starting transmission of video data.

Attention is also directed to new independent method claim 8 which is drafted in a manner which hopefully further emphasizes the initial transmission of digitized audio data over a communications network without corresponding digitized video data so as to determine available transmission capacity of the communications network before selecting one of plural corresponding, but different, resolution digitized video data as a function of the determined available transmission capacity. Thereafter, of course, the entire audio-visual data set (using the thus selected resolution for video data) is transmitted over the communication link.

None of the cited prior art teaches the applicants' claimed method for improved download, across a network of unknown bandwidth, according to which the bandwidth of the network is determined using only audio data before video data is transmitted. This

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novel method uniquely allows for the quality of video appropriate to network conditions to be selected before starting transmission of video data.

In devising the present invention, the inventors have improved upon known techniques. According to commonly implemented techniques, the receiver either initially presents a low-quality version of the video signal while waiting for a higher-quality second part or is required to buffer large amounts of low-quality video data until the second part of the signal has been received.
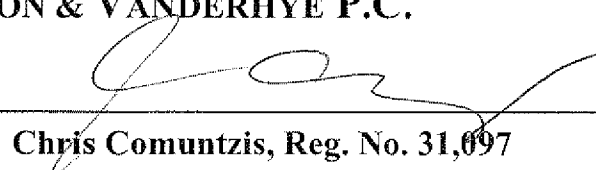
By only sending the video data at the highest quality that the network can support, the present invention advantageously enables the presentation of optimum-quality images at the outset of video data transmission – without the need for extensive buffering at the receiver.

Accordingly, this entire application is now believed to be in allowable condition, and a formal notice to that effect is earnestly solicited.

Respectfully submitted,

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